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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CHRISTOPHER DEVON WATKINS, SR., Defendant and Appellant.	F057262 (Super. Ct. No. BF123057B) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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A jury found Christopher Devon Watkins, Sr. (defendant), guilty as charged of conspiracy to commit grand theft of an air conditioning unit (Pen. Code, §§ 182, subd.

[*]Before Dawson, Acting P.J., Hill, J. and Poochigian, J.

(a)(1), 487, subd. (a)),[1] attempted grand theft (§§ 664, 487, subd. (a)), and resisting arrest (§ 148, subd. (a)(1)). As to the conspiracy charge, the jury found true the following overt acts: (1) defendant and a codefendant drove a pickup truck to a home on Mary Street; (2) they climbed onto the roof; (3) they disconnected the gas line to the air conditioner; (4) they cut the electrical wire to the air conditioner; and (5) they moved the air conditioner unit from its stand. The trial court sentenced defendant to state prison for two years and imposed various fines and fees.

Defendant claims insufficient evidence supports the jury's finding that the property value exceeded $400. We disagree and affirm.

FACTS

In the early morning hours of March 22, 2008, Deputy Michael Blue and his partner Albert Rodriguez arrived at a residence in response to a report of vandalism. Deputy Blue noticed a man on the roof of the building, which was under construction. He also saw another man getting out of a truck near the building. Deputy Blue identified himself and ordered the man near the truck to stop, but he fled, as did the man on the roof. Both men were eventually located. Defendant was identified as the person on the roof, his brother as the man near the truck.

The evidence at trial was that the air conditioning unit on the roof of the duplex had been moved off its stand, the wires cut, and the gas line to it broken. Testimony at trial valued the air conditioner at $2,500.

DISCUSSION

Substantial Evidence Supports Defendant's Grand Theft Conviction

Defendant challenges whether substantial evidence exists to prove that the value of the air conditioning unit exceeded $400 such that the crime was grand theft as opposed to petty theft. His challenge is without merit.

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[1] All further statutory references are to the Penal Code unless otherwise stated.

When a defendant challenges the sufficiency of the evidence to support a criminal conviction,

> "'[t]he test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. The court must view the entire record in the light most favorable to the judgment … to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the [defendant] guilty beyond a reasonable doubt. In making such a determination we must view the evidence in a light most favorable to respondent and presume in support of the judgment … the existence of every fact the trier could reasonably deduce from the evidence.'" (*In re Paul C.* (1990) 221 Cal.App.3d 43, 52.)

"Before the judgment of the trial court can be set aside for the insufficiency of the evidence, it must clearly appear that on no hypothesis whatever is there sufficient substantial evidence to support the verdict of the jury." (*People v. Hicks* (1982) 128 Cal.App.3d 423, 429.)

Grand theft is generally defined as the taking of personal property of a "reasonable and fair market value" exceeding $400. (§§ 484, 487, subd. (a).)

> "'Fair market value is the highest price, estimated in terms of money, for which the property would have sold in the open market at that time and in that locality, if the owner was desirous of buying but under no urgent necessity of doing so, if the seller had a reasonable time within which to find a purchaser, and if the buyer had knowledge of the character of the property and of the uses to which it might be put.'" (*People v. Pena* (1977) 68 Cal.App.3d 100, 102, fn. 1.)

"'[F]air market value' means the highest price obtainable in the market place rather than the lowest price or the average price.… It is not the highest price in the market but the highest price a willing buyer and a willing seller will arrive at." (*Id.* at p. 104; see also CALJIC No. 14.26.) A trier of fact is not bound to accept as conclusive an opinion on value, but should accord it the weight to which the trier of fact finds it to be entitled. (*People v. Pena*, *supra*, at p. 102; CALJIC No. 14.27.) In the absence of proof to the contrary, when new items have been stolen, their value can be established by simple

reference to their retail price. (See *People v. Tijerina* (1969) 1 Cal.3d 41, 45; *People v. Cook* (1965) 233 Cal.App.2d 435, 438.)

An owner of property is generally considered competent to estimate or offer a lay opinion of the property's value. (*People v. More* (1935) 10 Cal.App.2d 144, 145.) This rule, however, has been applied only where an owner has personal knowledge of an item's cost and use, or current condition. (See, e.g., *People v. Haney* (1932) 126 Cal.App. 473, 475-476 [owner of stolen saddle and harness allowed to testify to items' current value based on cost and use]; *People v. Coleman* (1963) 222 Cal.App.2d 358, 361 [owner of stolen mechanics' tools; same]; *People v. Henderson* (1965) 238 Cal.App.2d 566, 567 [owner of stolen watch and ring purchased the items and had a receipt].)

In *People v. Simpson* (1938) 26 Cal.App.2d 223, the evidence was deemed insufficient to support the defendants' grand theft convictions for stealing used tractor parts, because neither the owner of the parts nor any other witness testified to the parts' current mechanical condition, which was necessary to determine the parts' current fair market value. The *Simpson* court concluded that the jury had "no substantial basis upon which to fix the value of the property …." (*Id.* at p. 229.) But, in *People v. Coleman, supra*, 222 Cal.App.2d 358, the owner of mechanics' tools was deemed competent to testify to their value because he had purchased the tools and was familiar with their condition at the time of the theft. "'The owner of personal property who is familiar with its original cost and use is qualified to testify regarding its value.…'" (*Id.* at p. 361.)

Here, the information charged defendant, inter alia, with attempting to take the air conditioning unit, "the property of Larry Fambrough." (Some capitalization omitted.) Fambrough testified that he was the general contractor and developer of the duplex from which defendant attempted to steal the unit. According to Fambrough, the cost of the unit "[i]nstalled would be $2,500." When asked if the unit itself was $2,500, Fambrough replied "Yes." Fambrough testified that he had already paid for the unit and he had paperwork to verify that he bought it. Fambrough also testified that repairs to the unit would cost "another $500." When asked if the cost given for the unit was an estimate,

Fambrough stated, "No. I know exactly what that costs," explaining that he had built 10 similar duplexes in the same complex. Fambrough estimated that the unit had been on that duplex for approximately two weeks. According to Fambrough, at the time of the incident, the building was complete, but they were waiting "for water to be installed."

Defendant challenges the basis for Fambrough's testimony, claiming there was no evidence that he was the owner of the air conditioning unit. He also argues that there was no evidence that the value of the unit exceeded $400 because Fambrough's testimony that the unit cost $2,500 "represents the cost of a brand new air conditioner plus installation," rather than one in the condition in which defendant found the unit. We disagree.

First, there is sufficient evidence to infer that Fambrough was the owner of the air conditioning unit. While the record does not directly identify the owner of the unit, all references in the record support the conclusion that Fambrough was the owner. As the developer of the property, he testified that he purchased the unit and installed it two weeks before defendant attempted to steal it. The duplex was obviously not yet occupied, as evidenced by Fambrough's testimony that he was waiting to have water hooked up. Fambrough also mentioned that he and his son took turns daily "going by renting" the building on which the unit was attached.

Second, there was sufficient evidence that the value of the unit exceeded $400. Fambrough knew how much the unit cost; he testified that he had the paperwork for the sale of the unit and he bought other units of the same type as he had built 10 similar duplexes in that same development. Although Fambrough somewhat confusingly testified first that the unit cost "$2,500 installed," he also agreed when asked whether "the unit itself was $2,500." From this, a rational trier of fact could reasonably conclude that the unit was worth more than $400, especially since Fambrough testified that it would cost $500 to repair it.

What defendant seeks to do is have this court reevaluate the strength of this evidence and determine the facts. That is not our role. "The weight to be given the owner's testimony as to value [of his or her property] is for the trier of fact." (*People v.*

Henderson, *supra*, 238 Cal.App.2d at p. 567.) Our role is to ascertain whether there is evidence that is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. This evidence meets that standard.

We also reject defendant's claim that the trial court should have given CALJIC No. 14.26 instead of CALJIC No. 14.27 because there was no evidence that Fambrough was the owner of the property.

CALJIC No. 14.26, which was requested by defense counsel but refused by the trial court, describes "fair market value" as the highest price, in cash, for which the property would have sold in the open market if the owner was under no urgent necessity to sell the property, and the seller had a reasonable time within which to find a purchaser.[2] The trial court stated it would not give CALJIC No. 14.26 because "[w]e have no evidence whatsoever of the fair market value. All we have is the opinion of the owner."

Instead, the jury was instructed that it could consider the owner's opinion of value. (CALJIC No. 14.27.)[3] A trial court has a general duty to instruct on principles of law

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[2]CALJIC No. 14.26 states: "When the value of property alleged to have been taken by theft must be determined, the reasonable and fair market value at the time and in the locality of the theft shall be the test. Fair market value is the highest price, in cash, for which the property would have sold in the open market at that time and in that locality, (1) if the owner was desirous of selling, but under no urgent necessity to do so; (2) if the buyer was desirous of buying but under no urgent necessity to do so; (3) if the seller had a reasonable time within which to find a purchaser; and (4) if the buyer had knowledge of the character of the property and of the uses to which it might be put."

[3]CALJIC No. 14.27 states: "An expression of opinion on value by the owner may be considered by you in determining value together with any other evidence bearing on that issue. In determining what weight to give an owner's opinion, you should consider the believability of the owner, the facts or materials upon which the opinion is based and the reasons for the opinions. [¶] An opinion is only as good as the facts and reasons on which it is based. If you find that any fact has not been proved [or has been disproved], consider that in determining the value of the opinion. Likewise, you must consider the strengths and weaknesses of the reasons on which it is based. [¶] You are not bound to accept an opinion as conclusive, but you should give to it the weight which you shall find it to be entitled. You may disregard any opinion if you find it to be unreasonable."

relevant to the issues raised by the evidence. (*People v. Saddler* (1979) 24 Cal.3d 671, 681.) Here, the evidence pointed to Fambrough as the owner of the property, and CALJIC No. 14.27 was properly given.

Assuming arguendo that the trial court erred by giving CALJIC No. 14.27 instead of CALJIC No. 14.26, any such error was harmless. Defendant presented no evidence to dispute Fambrough's valuation or that the retail price does not reflect the fair market value of the air conditioning unit. In fact, in closing, defense counsel stated that he did not dispute Fambrough's testimony that the unit was $2,500 installed. Instead, he argued that the critical question was when the unit had been "ripped out"—if the evidence proved that defendant and his brother were "involved" in ripping out the unit, he conceded the prosecution "of course … gets his conviction." But if, as the defense argued, the unit was in a "ripped out" condition when defendant and his brother found it, "you have attempted petty theft" because there was no proof that the value of the unit would be over $400.

Here, the jury specifically found that defendant drove a pickup truck to the home on Mary Street, climbed onto the roof, disconnected the gas line to the air conditioner unit, cut the electrical wire to the unit, and moved the unit from its stand. Because it found that defendant had "ripped out" the unit, it follows that the jury found Fambrough's testimony regarding the value of the unit conclusive and would have made the same determination had it been given CALJIC No. 14.26. Any instructional error was therefore harmless beyond a reasonable doubt. (See *People v. Lee* (1987) 43 Cal.3d 666, 678 [applying *Chapman v. California* (1967) 386 U.S. 18, 21, harmless error analysis to instruction error].)

DISPOSITION

The judgment is affirmed.